

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH  
COMPANY

EDISON

Application for a Certificate of Public Convenience and Necessity, pursuant to Section 8-406.1 of the Illinois Public Utilities Act, and an Order pursuant to Section 8-503 of the Illinois Public Utilities Act, to Construct, Operate, and Maintain a new 345 kilovolt transmission line in Ogle, DeKalb, Kane and DuPage Counties, Illinois

Docket 13-0657

**MOTION TO RECONSIDER AND REVERSE ORDER GRANTING REHEARING  
TO MUIRHEAD GROUP**

Intervenor Ellen Roberts Vogel (“Vogel”) moves the Illinois Commerce Commission (“Commission”), pursuant to 83 Ill. Admin. Code § 200.190, to reconsider and reverse its decision to grant rehearing in favor of Wayne Muirhead, Dean Muirhead, Dennis Muirhead, John Cash, Mary Lewis, and Arlene Watermann (the “Muirhead Group” or “MG”). In support of her motion (“Vogel Motion”), Vogel states as follows:

1. On November 20, 2014, the Muirhead Group filed a Motion for Rehearing and/or to Correct Record Regarding FPDKC Adjustment (“MG Motion”).
2. Vogel<sup>1</sup> is a member of the group of parties (SKP Parties and URM) that participated in this proceeding. According to her testimony, Vogel would be adversely affected by the relief MG requests, in that she has an interest

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<sup>1</sup> Vogel filed a separate Petition to Intervene on February 14, 2014, which was granted. Vogel also filed prepared written testimony, in the form of Cross Rebuttal Testimony (Vogel Ex. 1.0), on April 7, 2014, which she supported by affidavit which was executed April 22, 2014, and filed on April 23. Her testimony was admitted into the record. Tr., at 299-300.

in property located directly east of the Muirhead Springs Forest Preserve. Vogel Ex. 1.0, 2:8-9.

3. By Memorandum dated November 20, 2014, the same date as the MG Motion, the Administrative Law Judges (“ALJs”) recommended that the Commission grant rehearing. Docket 13-0657, A.L.J. Mem. (Nov. 20, 2014). On November 25, 2014, the Commission in conference granted the MG Motion. Docket 13-0657, Notice of Commission Action (Nov. 20, 2014).

4. The MG Motion, among other things, is untimely, is misleading, improperly states as facts information that is outside the record, and omits other highly relevant and material information.

a. Untimeliness. None of the asserted factual information contained in the MG Motion is new or recently discovered. All of it could have been presented in an appropriate fashion, in accordance with the Commission’s Rules of Practice (“Rules”), through testimony or otherwise. The MG members had actual knowledge of ComEd’s Primary and Alternate routes before ComEd filed its Petition on December 2, 2013, and prior to that date sought to have the Primary Route changed in the same manner as they are now advocating. See Docket 13-0657, Response to Commonwealth Edison’s Initial Brief, para. 4, App. A (filed by MG members on May 13, 2014) (stating objections to Primary route communicated to ComEd on November 29, 2013) (“MG Late Response”).<sup>2</sup>

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<sup>2</sup> Over the joint objections of the SKP Parties (Motion to Strike Out-Of-Time Response to Commonwealth Edison’s Initial Brief, filed May 13, 2014) and ComEd (Commonwealth Edison Company’s response to SKP Parties’ Motion to Strike Out-Of-Time Response (filed May 19, 2014), the ALJs struck said MG Late Response. Docket 13-0657, Notice of Administrative Law Judges’ Ruling (May 28, 2014).

Each of the members of the Muirhead Group, represented by counsel, intervened in this proceeding well before deadlines for the filing of testimony, and made known their position on routing in their Petitions to Intervene. But, inexplicably, they all failed to follow through with their opposition by submitting testimony in support of their positions. Moreover, they have offered no reason why they failed to proffer any testimony.<sup>3</sup> Additionally, none of the Muirhead Group members filed briefs during the briefing phase of the proceeding. After their intervention and prior to filing their MG Motion, the only written argument MG offered in support of their position came after the testimony and hearings were completed and the record marked heard and taken, and after the time for filing briefs had expired. MG Late Response (filed May 13, 2014). As a result, it was stricken. By failing to include any statement as to why the additional evidence contained therein was not previously adduced, the MG Motion was clearly in direct violation of Rule 880(a). Vogel, as a member of the SKP Parties, filed a statement of opposition to the MG Motion on November 24, 2014, citing this violation as part of her argument why the Commission should deny the MG Motion. Docket 13-0657, Statement of Opposition to Motion for Rehearing and/or to Correct Record Regarding FPDKC Adjustment (Nov. 24, 2014) (“Statement of

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<sup>3</sup> Perhaps the MG members hoped they could rely on the testimony of Monica Meyers, Executive Director of the Forest Preserve District of Kane County (“FPDKC”), to carry the day for them. In contrast to the Muirhead Group’s lack of testimony or other evidence, once Monica Meyers submitted testimony on behalf of the Forest Preserve District of Kane County advocating for the Muirhead Springs Forest Preserve routing adjustment, Vogel, in full observance of the Rules, timely filed her testimony in rebuttal to Meyers’ testimony. Vogel Ex. 1.0.

Opposition”). Neither the ALJs nor the Commission referenced or acknowledged the Statement of Opposition.<sup>4</sup>

b. MG Motion Was Misleading. In para. 2 of the MG Motion, MG quotes a portion of the Order comparing the Primary route and the Alternate route. The MR Motion continues, stating, “In truth, however, ComEd’s Primary Route is 12,750 linear feet whereas the FPDKC Adjustment measures 9,100 linear feet, a difference of 3,650 feet.” MG Motion, at 1-2. The implication from this quoted sentence is that the quoted portion of the Order was factually mistaken. The above-quoted sentence from the MG Motion, however, actually compares (i) the Primary route to (ii) the Primary route with MG’s proposed adjustment, and has no bearing on a comparison of the Primary route with the Alternate route. The MG Motion’s wording incorporating the “In truth, however,” introductory phrase, can be read to mean that MG is claiming the Order contains a factual error in the quoted sentence comparing the Primary route and the Alternate route.<sup>5</sup>

The MG Motion was further misleading by omitting relevant and material facts and information that should be included. This Vogel Motion describes these omissions in subparagraph d. below.

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<sup>4</sup> The ALJ Memorandum was dated November 20, 2014, and the Commission’s decision to grant rehearing was announced in conference on November 25, 2014. It appears that, because of the timing involved, neither the ALJs nor the Commissioners had had an opportunity to review or consider the Statement of Opposition.

<sup>5</sup> Based on the wording in the ALJs’ November 20 Memorandum, it is possible that the ALJs so read this portion of the MG Motion. “The Motion asserts that, contrary to the recitations in the Order, the selected route which impacts their properties [the Primary route] is neither shorter nor does it make greater use of existing Commonwealth Edison property rights.” (phrase in brackets added). Docket 13-0657, A.L.J. Mem. (Nov. 20, 2014).

c. Inclusion of Information as Fact Outside the Record. As Vogel showed in the Statement of Opposition, the MG Motion contains factual averments including lengths of various routes or route segments, calculations of acreages, and numbers of towers, and includes purported maps some of which show tower locations. No witness affidavit is provided; only verification by MG's attorney. As stated above, the MG Motion offers no reason or excuse for not offering such factual information during the evidentiary portion of this proceeding, despite having previously been granted party status and being represented by counsel.

d. Highly Relevant and Material Information Omitted. As the MG Motion and attached documents demonstrate, MG contends the proposed transmission line's Primary route should be adjusted to continue along the existing railroad right of way, proceeding from west to east through the Muirfield Springs Forest Preserve and continuing eastward until it rejoins the Primary Route. ComEd Ex. 26.03 illustrates the proposed adjustment, which the FPDKC had proposed. See Exhibit A attached hereto and incorporated by reference herein. The MG Motion omitted any mention of Plato Center.<sup>6</sup> As can be seen on Exhibit A, substantial development exists on both the north and south sides of the proposed route adjustment. Consistent with this omission, the MG Group also fails to mention the related testimony of ComEd's routing expert, Donell Murphy, who discusses said adjustment in response to its having been proposed by the FPDKC's witness Ms. Meyers. Murphy Sur., ComEd Ex. 26.0 CORR, 5:100 –

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<sup>6</sup> The MG Late Response similarly made the same omission.

7:140. In stating one of the reasons why the proposed adjustment would not be feasible, Ms. Murphy testified:

Additionally, locating the proposed transmission line along the railroad that runs through the Muirhead Forest Preserve and in the vicinity of Plato Center (as Ms. Meyers implies in her testimony) would displace existing buildings and also locate the line immediately adjacent to more existing residences than currently proposed.

Murphy Sur., ComEd Ex. 26.0CORR, 6:123-127.<sup>7</sup>

The MG Group may realize this impediment to their proposed routing adjustment and plan to make further proposed adjustments on rehearing in order to route around Plato Center. To do so, however, would largely negate the purported advantages of their proposed adjustment, from the standpoint of length, numbers of towers, intrusions on farmland, and cost. In that event, the basis for granting rehearing would have been removed.

5. In conclusion, the procedural nonconformities and substantive defects as described above should cause the Commission to reconsider its prior ruling and deny rehearing. Vogel and other parties should not be put through another evidentiary and briefing phase of this proceeding that will end up being for naught.

WHEREFORE, Ellen Roberts Vogel hereby requests that the Commission reconsider its prior grant of rehearing to the Muirhead Springs Group, and issue a revised ruling denying rehearing.

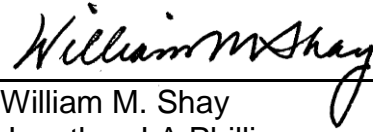
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<sup>7</sup> Neither counsel to the FPDKC nor counsel to the Muirhead Group conducted cross-examination of Ms. Murphy.

December 12, 2014

Respectfully submitted,

Ellen Roberts Vogel, by,

A handwritten signature in black ink that reads "William M. Shay". The signature is written in a cursive style with a large, stylized "W" and "S".

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